Had the Fifth, Sixth and Seventh Senatorial Districts been allowed to stand, the result would have been inescapably unconstitutional legislative apportionment and violation of the guarantee of equal protection of the laws afforded by the Fourteenth Amendment of the United States Constitution. The populace of the Fifth Senatorial District would have been over-represented and the populace of the Sixth and Seventh Districts would have been under-represented. The significant deviations from the ideal as shown by the uncontradicted evidence were unjustified by the appellants before the District Court and cannot be justified. Article II, Section 6 of the Constitution of Virginia commands that the General Assembly in establishing its legislative districts to provide for "representation in proportion to the *population* of the district". (Emphasis added.) In establishing the Fifth, Sixth and Seventh Senatorial Districts as single-member districts, the General Assembly arbitrarily disregarded the *actual population* of each of these districts, by disregarding the presence and distribution of home-ported naval personnel within the area comprising the three Senatorial districts. As noted by the District Court, this Court taught in *Davis* v. *Mann*, 377 U.S. 678, 691 (1964), that it is constitutionally impermissible to ignore the presence of military personnel for the purpose of legislative redistricting.

Next, the suggestion by appellants in their jurisdictional statement that the District Court acted precipitously in ordering reapportionment of the Senate of Virginia by creating one three-member district from the former Fifth, Sixth and Seventh Districts, without first giving the General Assembly an opportunity to correct the reapportionment plan, is simply unfounded. When the District Court entered judgment on July 2, 1971, the Special Session of the Virginia General Assembly for the limited purpose of reapportionment of its legislative districts had continued since January 6, 1971. During that time, the very evidence regarding the actual population distribution of home-ported naval personnel, which was

presented before the District Court, had been extensively presented to the General Assembly through the offices of two of your appellees herein, Henry E. Howell, Jr. and Peter K. Babalas, members of the Senate of Virginia from Norfolk. The General Assembly did not contradict or heed that evidence and cannot now criticize the District Court for correcting the malapportionment which resulted from its disregard.

With regard to the appellant City of Virginia Beach, it is noted that that appellant, as an intervenor-defendant in the District Court, intervened for the limited purpose of maintaining Bureau of Census Population figures unchanged as they related to certain Federal and State Funds granted to the City of Virginia Beach. As appears from the face of its Interlocutory Order, the District Court has in no way invalidated the use of Bureau of Census Population figures with regard to grants of Federal and State Funds. Therefore, there is no substantial question raised herein with regard to the appellant City of Virginia Beach.

CONCLUSION

From the foregoing it is clear that the judgment of the District Court was plainly right, based on the law and the evidence, and hence this Motion to Affirm that judgment of the District Court reapportioning the Senate of Virginia should be granted without further argument.

Respectfully submitted,

Henry E. Howell, Jr.
Counsel pro se and for his
Co-Appellees, Peter K.
Babalas, Angeline V.
Fitzpatrick, Reverend
Lawrence L. Craig and
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CERTIFICATE

I, Henry E. Howell, Jr., a member of the Bar of the Supreme Court of the United States, one of the appellees herein and counsel for appellees Henry E. Howell, Jr., Peter K. Babalas, Angeline K. Fitzpatrick, Reverend Lawrence L. Craig and William K. Beach, hereby certify that I have served all parties required to be served by depositing three copies of the foregoing Motion to Affirm, in the United States Mails, first class postage prepaid, this 2nd day of February, 1972, addressed to The Honorable Andrew P. Miller, Attorney General of Virginia, The Honorable Vann H. Lefcoe and The Honorable Anthony F. Troy, Assistant Attorneys General of Virginia, Counsel for Defendants/Members of the State Board of Elections, Supreme Court-Library Building, Richmond, Virginia 23219; James M. Thomson, Esquire, Plaintiff-Intervenor *pro se* P. O. Box 1138, Alexandria, Virginia 22313; Edmund D. Campbell, Esquire, Counsel for Plaintiffs Clive L. DuVal, II, et al., 1425 H. Street, N.W., Suite 822, Washington, D. C. 20005; Stanford E. Parris, Esquire, Counsel for Plaintiffs Stanford E. Parris, et al., 4085 Chain Bridge Road, Fairfax, Virginia 22030; The Honorable Andre Evans, Commonwealth's Attorney for Virginia Beach, Counsel for Defendant members of the Electoral Board of the City of Virginia Beach, Princess Anne Station, Virginia Beach, Virginia 23456; The Honorable Joseph H. Campbell, Commonwealth's Attorney of Norfolk, Counsel for Defendant members of the Electoral Board of the City of Norfolk, P. O. Box 1531, Norfolk, Virginia 23501; The Honorable R. F. Horan, Jr., Commonwealth's Attorney of Fairfax County, Counsel for Defendant members of the Electoral Board of Fairfax County, Fairfax, Virginia 22030; The Honorable Gordon B. Tayloe, Jr., Assistant City Attorney of the City of Norfolk, Counsel for Defendant-Intervenor City of Norfolk, 908 City Hall Building, Norfolk, Virginia 23501; The Honorable J. Dale Bimson, City Attorney of Virginia Beach, Counsel for Defendant-Intervenor City of Virginia Beach, Municipal Center, Virginia Beach, Virginia

23456; Harry Frezice, III, Esquire, and John Ashton, Esquire, Counsel for Defendant-Intervenor City of Virginia Beach, Hunton, Williams, Gay, and Gibson, P. O. Box 1535, Richmond, Virginia 23212; Clive L. DuVal, II, Esquire, Appellee *pro se*, 2000 N. 15th Street, Arlington, Virginia 22216; Henry L. Marsh, III, Esquire, Hill, Tucker and Marsh, Counsel for Plaintiff-Intervenors William S. Thornton, et al., 214 East Clay Street, Richmond, Virginia 23219; and C. V. Spratley, Jr., Counsel for Defendant-Intervenor Lewis A. McMurran, Jr., P. O. Box 575, Newport News, Virginia 23607; and to Robert L. Weinberg, Esquire, 1000 Hill Building, Washington, D. C. 20006, and C. Stanley Dees, Esquire, 314 North Pitt Street, Alexandria, Virginia 22314, plaintiffs who have filed separate notices of appeal.

/s/ Henry E. Howell, Jr.